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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,791	01/17/2002	Marvin Jay Pearce	55227 (45105)	7458
21874	7590	01/06/2004	EXAMINER	
EDWARDS & ANGELL, LLP P.O. BOX 9169 BOSTON, MA 02209			WACHSMAN, HAL D	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 01/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/055,791	PEARCE, MARVIN JAY	
	<b>Examiner</b>	<b>Art Unit</b>	Aw
	Hal D Wachsman	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 October 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 30-47 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 30-47 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 05 August 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_



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10/055791

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT      PAPER

9

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Hal D Wachsman  
Primary Examiner  
Art Unit: 2857

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 35 (the second claim 35), 36 and 37, been renumbered as claims 36, 37 and 38 respectively.

2. The specification amendment to the last paragraph on page 6 of the specification in the reply filed 10-23-03 could not be entered and is improper under 37 C.F.R. 1.121 because the amendment does not include the last sentence of that paragraph "That is a user can conveniently operate... and adjustment to the one or more monitoring units." and the amendment does not show that this sentence was deleted if that was the intention here. Because this specification amendment could not be entered, the specification objection made in paragraph 4 of the previous Office action has not been corrected and is therefore incorporated by reference. Appropriate correction is required.

3. The amended Abstract in the reply filed 10-23-03 is objected to because it contains purported merits (i.e. "... can completely obviate..."). Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 32 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 32 and 42 contain a variety of trademarks (Windows, Linux, etc.) which create an uncertain claim scope (see *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982)) since the trademark or trade name cannot be used properly to identify any particular material or product. In fact, the value of a trademark would be lost to the extent that it became descriptive of a product, rather than used as an identification of a source or origin of a product. Thus, the use of a trademark or trade name in a claim to identify or describe a material or product would not only render a claim indefinite, but would also constitute an improper use of the trademark or trade name.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 30-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halpern et al. (5,687,717) in view of Thompson (5,314,450).

As per claim 30, Halpern et al. (see at least abstract) disclose "providing a monitoring system". Halpern et al. (figure 1, col. 11 lines 49-53) disclose "one or more

physiological sensory devices". Halpern et al. (Abstract, figures 1, 2, 4, col. 2 lines 65-67, col. 3 lines 1-6) disclose "an electronic module unit..one or more sensory devices". Halpern et al. (Abstract, figure 3, col. 2 lines 1, 2, col. 5 lines 35-49, col. 8 lines 11-27, 44-46, 66, 67, col. 9 lines 3-13) disclose "a computer unit that utilizes an open architecture computing platform...from the module". Halpern et al. (Abstract, figure 1, col. 11 lines 49-53) disclose "providing data to the module unit...data to the module unit". With respect to the last step of the claim, Halpern et al. (col. 13 lines 21-45) does disclose the transferring of data between the module unit and the computer unit however does not explicitly disclose the use of a handshake protocol that would ensure reliable data transfer and notification of error. However, Thompson (col. 2 lines 45-60, col. 4 lines 44-57) teaches this excepted feature. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Thompson to the invention of Halpern et al. as specified above because as taught by Thompson (col. 2 lines 20-23) it would maintain continuity of the communications link while using cyclic redundancy coding to provide forward detection of link transmission errors.

As per claim 31, Thompson (col. 2 lines 53-60, 46-50) teaches the feature of this claim. . It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Thompson to the invention of Halpern et al. as specified above because as taught by Thompson (col. 2 lines 20-23, col. 4 lines 44-46, 55, 56) it would maintain continuity of the communications link while using cyclic redundancy coding to provide forward detection of link transmission errors

as well as provide the capability of notifying an operator of the communications link that a disruption has occurred.

As per claim 32, Halpern et al. (col. 9 lines 3-13) disclose the utilization of WINDOWS.

As per claim 33, Halpern et al. (figure 7, col. 8 lines 51-55) disclose the feature of this claim.

As per claim 34, Halpern et al. (figure 1, col. 7 lines 60-63, col. 8 lines 20-26) disclose one or more of the sensory devices monitoring one or more of the patient characteristics cited in this claim.

As per claim 35, Halpern et al. (col. 2 lines 65-67, col. 3 lines 1, 18-22, col. 6 lines 25-27) disclose the feature of this claim.

As per claim 36, Halpern et al. (Abstract, col. 6 lines 40-47) disclose the feature of this claim.

As per claim 37, Halpern et al. (see at least abstract) disclose the feature of this claim.

As per claim 38, Halpern et al. (col. 4 lines 65-67, col. 5 lines 9-14, 35-41, col. 6 lines 40-50, 55-60) disclose the feature of this claim.

As per claim 39, Halpern et al. (col. 4 lines 50-55, col. 5 lines 63-67, col. 6 lines 1-5) disclose the feature of this claim.

As per claim 40, Halpern et al. (figure 1, col. 11 lines 49-53) disclose "one or more physiological sensory devices". Halpern et al. (Abstract, figures 1, 2, 4, col. 2 lines 65-67, col. 3 lines 1-6) disclose "an electronic module unit..one or more sensory

devices". Halpern et al. (Abstract, figure 3, col. 2 lines 1, 2, col. 5 lines 35-49, col. 8 lines 11-27, 44-46, 66, 67, col. 9 lines 3-13) disclose "a computer unit that utilizes an open architecture computing platform...from the module". With respect to "wherein the module unit and computer unit transfer data through a handshaking ...reliable data transfer and notification of error", Halpern et al. (col. 13 lines 21-45) does disclose the transferring of data between the module unit and the computer unit however does not explicitly disclose the use of a handshake methodology that would ensure reliable data transfer and notification of error. However, Thompson (col. 2 lines 45-60, col. 4 lines 44-57) teaches this excepted feature. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Thompson to the invention of Halpern et al. as specified above because as taught by Thompson (col. 2 lines 20-23) it would maintain continuity of the communications link while using cyclic redundancy coding to provide forward detection of link transmission errors.

As per claim 41, Thompson (col. 2 lines 53-60, 46-50) teaches the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Thompson to the invention of Halpern et al. as specified above because as taught by Thompson (col. 2 lines 20-23, col. 4 lines 44-46, 55, 56) it would maintain continuity of the communications link while using cyclic redundancy coding to provide forward detection of link transmission errors as well as provide the capability of notifying an operator of the communications link that a disruption has occurred.

As per claim 42, Halpern et al. (col. 9 lines 3-13) disclose the utilization of WINDOWS.

As per claim 43, Halpern et al. (figure 7, col. 8 lines 51-55) disclose the feature of this claim.

As per claim 44, Halpern et al. (figure 1, col. 7 lines 60-63, col. 8 lines 20-26) disclose one or more of the sensory devices monitoring one or more of the patient characteristics cited in this claim.

As per claim 45, Halpern et al. (col. 2 lines 65-67, col. 3 lines 1, 18-22, col. 6 lines 25-27) disclose the feature of this claim.

As per claim 46, Halpern et al. (Abstract, col. 6 lines 40-47) disclose the feature of this claim.

As per claim 47, Halpern et al. (col. 4 lines 65-67, col. 5 lines 9-14, 35-41, col. 6 lines 40-50, 55-60) disclose the feature of this claim.

8. The following references are cited as being art of additional general interest:  
Rossi which discloses a method for reliable exchange of modem handshaking information over a cellular radio carrier, Sherman et al. which disclose the authorization of embedded agents by handshake operations implemented as communication messages, Leshay et al. which disclose the detection of handshaking protocol errors and Labounty et al. which disclose the use of handshaking in an intranet-based medical data distribution system.

9. Applicant's arguments with respect to claims 30-47 have been considered but are moot in view of the new ground(s) of rejection. The Examiner further respectfully notes

that handshaking protocols were notoriously well known in the prior art and additional evidence of this is found in the additional art of interest cited in paragraph 8 above. With respect to the open architecture computing platform, page 6, lines 22-24, of the specification states "Preferred monitoring systems of the invention can utilize a variety and more preferably any open architecture computing platform, e.g. Windows, WindowsCE, Palm, Linux, etc." Here again, all of these open architecture computing platforms were notoriously well known in the prior art and as shown in the 35 U.S.C. 103 rejections above, the Halpern et al. reference utilizes Windows and the industry standard UNIX (see column 8, lines 44-46 of Halpern et al.) which is also a well known in the prior art open architecture design.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2857

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D Wachsman whose telephone number is 703-305-9788. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



Hal D Wachsman  
Primary Examiner  
Art Unit 2857

HW  
January 1, 2004